

**IMPORTANT – READ CAREFULLY.** BY CLICKING THE “**ACCEPT**” BUTTON (BELOW) OR COPYING OR INSTALLING OR USING THE SITE (DEFINED BELOW) AND SERVICES (DEFINED BELOW), YOU OR THE ORGANIZATION YOU REPRESENT ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THESE TERMS OF SERVICE (THE “**TERMS**” or “**TERMS OF SERVICE**”). YOUR AND YOUR COMPANY’S (COLLECTIVELY, “**YOU**”) CONTINUED USE OF THE SITE AND SERVICES SHALL ALSO CONSTITUTE ASSENT TO THESE TERMS. IF YOU DO NOT AGREE TO ALL OF THE TERMS, CLICK THE “**DO NOT ACCEPT**” BUTTON (BELOW). IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. IF YOU ARE EXECUTING THESE TERMS ON BEHALF OF AN ORGANIZATION, YOU REPRESENT THAT YOU HAVE AUTHORITY TO DO SO.

Please read these Terms of Service (collectively with Udisense, Inc. DBA: Nanit (“Nanit”, we”, us” or our”) Privacy Policy and DMCA Copyright Policy, the “Terms of Service”) fully and carefully before using <https://www.nanit.com> (the “Site”) and the services, features, content or applications offered by Nanit (together with the Site, the “Services”). The term “you” or “You” shall refer to any person or entity who views, uses, accesses, browses or submits any content or material to the Site. These Terms of Service set forth the legally binding terms and conditions for your use of the Site and the Services. We take the privacy of our users very seriously. For our current Privacy Policy, please click here [<https://www.nanit.com/legal/privacy>].

**1. Acceptance of Terms of Service.**

a. By registering for and/or using the Services in any manner, including but not limited to visiting or browsing the Site, you agree to these Terms of Service and all other operating rules, policies and procedures that may be published from time to time on the Site by us, each of which is incorporated by reference and each of which may be updated from time to time without notice to you.

b. Certain of the Services may be subject to additional terms and conditions specified by us from time to time; your use of such Services is subject to those additional terms and conditions, which are incorporated into these Terms of Service by this reference.

c. These Terms of Service apply to all users of the Services, including, without limitation, users who are contributors of content, information, and other materials or services, registered or otherwise.

d. **ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.**

e. We reserve the right, in our sole discretion, to modify or replace any of these Terms of Service, or change, suspend, or discontinue the Services (including without limitation, the availability of any feature, database, or content) at any time by posting a notice on the Site or by sending you notice through the Services, via e-mail or by another appropriate means of electronic communication. We may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. While we will timely provide notice of modifications, it is also your responsibility to check these Terms of Service periodically for changes. Your continued use of the Services following notification of any changes to these Terms of Service constitutes acceptance of those changes, which will apply to your continued use of the Services going forward. Your use of the Services is subject to the Terms of Service in effect at the time of such use.

**2. Eligibility.** The Children’s Online Privacy Protection Act (“COPPA”) requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. We do not knowingly collect or solicit personally identifiable information from a child under 13 without obtaining verifiable consent from that child’s parent or guardian, and you represent and warrant that you are at least 13 years of age. If you are under age 13, you may not, under any circumstances or for any reason, use the Services. You agree that the nature of the Services may require us to collect personally identifiable information of children under age 13 in order to receive the full functionality of the Services, and you consent to such collection, use and disclosure of such information as set forth further in our Privacy Policy. We may, in our sole discretion, refuse to offer the Services to any person or entity and change its eligibility criteria at any time. You are solely responsible for ensuring that these Terms of Service are in compliance with all laws, rules and regulations applicable to you and the right to access the Services is revoked where these Terms of Service or use of the Services is prohibited or to

the extent offering, sale or provision of the Services conflicts with any applicable law, rule or regulation. Further, the Services are offered only for your use, and not for the use or benefit of any third party.

3. **Registration.** To sign up for the Services, you must register for an account on the Services (an “Account”). You must provide accurate and complete information and keep your Account information updated. You shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as a username a name subject to any rights of a person other than you without appropriate authorization; or (iii) use, as a username, a name that is otherwise offensive, vulgar or obscene. You are solely responsible for the activity that occurs on your Account, and for keeping your Account password secure. You may never use another person’s user account or registration information for the Services without permission. You must notify us immediately of any change in your eligibility to use the Services (including any changes to or revocation of any licenses from state authorities), breach of security or unauthorized use of your Account. You should never publish, distribute or post login information for your Account. You shall have the ability to delete your Account, either directly or through a request made to one of our employees or affiliates.

4. **Content.**

a. **Definition.** For purposes of these Terms of Service, the term “Content” includes, without limitation, information, data, text, photographs, videos, audio clips, software, algorithms, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Services. For the purposes of this Agreement, “Content” also includes all User Content (as defined below).

b. **User Content.** All Content added, created, uploaded, submitted, distributed, or posted to the Services by users (collectively “User Content”), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. You represent that all User Content provided by you is accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations. You acknowledge that all Content, including User Content, accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. We do not guarantee that any Content you access on or through the Services is or will continue to be accurate.

c. **Notices and Restrictions.** The Services may contain Content provided by us, our partners or our users that is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Services.

d. **Use License.** Subject to these Terms of Service, we grant each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for other than purposes of using the Services is expressly prohibited without prior written permission from us. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third party right.

e. **License Grant.** By submitting User Content through the Services, you hereby do and shall grant us a worldwide, non-exclusive, perpetual, royalty-free, fully paid, sublicensable and transferable license to use, edit, modify, truncate, aggregate, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully exploit the User Content in connection with the Site, the Services and our (and our successors’ and assigns’) businesses, including without limitation for promoting and redistributing part or all of the Site or the Services (and derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites and feeds), and including after your termination of your Account or the Services. You also hereby do and shall grant each user of the Site and/or the Services a non-exclusive, perpetual license to access your User Content through the Site and/or the Services, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such User Content, including after your termination of your Account or the Services. For clarity, the foregoing license grants to us and our users does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to your User Content, unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights.

f. **Availability of Content.** We do not guarantee that any Content will be made available on the Site or through the Services. We reserve the right to, but do not have any obligation to, (i) remove, edit or modify

any Content in our sole discretion, at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Terms of Service), or for no reason at all and (ii) to remove or block any Content from the Services.

#### **5. Rules of Conduct.**

a. As a condition of use, you promise not to use the Services for any purpose that is prohibited by these Terms of Service. You are responsible for all of your activity in connection with the Services.

b. You shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Service, including without limitation any User Content, that:

i. infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty (see our DMCA Copyright Policy);

ii. you know is false, misleading, untruthful or inaccurate;

iii. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, or is otherwise inappropriate as determined by us in our sole discretion;

iv. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming");

v. contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of ours or of any third party;

vi. impersonates any person or entity, including any of our employees or representatives; or

vii. includes anyone's identification documents or sensitive financial information.

c. You shall not: (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers') infrastructure; (ii) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services; (iii) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services); (iv) run any form of auto-responder or "spam" on the Services; (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site; (vi) harvest or scrape any Content from the Services; or (vii) otherwise take any action in violation of our guidelines and policies.

d. You shall not (directly or indirectly): (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the Services, or (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national and international laws and regulations.

e. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Service, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of us, our users and the public.

**6. Third Party Services.** The Services may permit you to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Services. When you access third party resources on the Internet, you do so at your own risk. These other resources are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply our endorsement or any association between us and their operators. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.

**7. Apple, Inc. Device and Service Terms.** If you are accessing the Services on a device provided by Apple, Inc. ("Apple") or otherwise obtained access to the Services through the Apple App Store, the following terms shall apply:

- a. Both you and we acknowledge that these Terms of Service are concluded between you and us only, and not with Apple, and that Apple is not responsible for, does not endorse, and is not involved in the Services or Content;
- b. The Services are licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms of Service as applicable;
- c. You will only use the Services in connection with an Apple device that you own or control;
- d. You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Services;
- e. In the event of any failure of the Services to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Services;
- f. You acknowledge and agree that we, and not Apple, are responsible for addressing any claims you or any third party may have in relation to our Services;
- g. You acknowledge and agree that, in the event of any third party claim that the Services or your possession and use of the Services infringes that third party's intellectual property rights, we, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- h. You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- i. Both you and we acknowledge and agree that, in your use of the Services, you will comply with any applicable third party terms of agreement which may affect or be affected by such use; and
- j. Both you and we acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of these Terms of Service, and that upon your acceptance of these Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Service against you as the third party beneficiary hereof.

## 8. **Payments and Billing.**

- a. **Paid Services.** Certain of our Services may be subject to payments now or in the future (the "Paid Services"). Please see individual products pages for a description of the current Paid Services for that product. Certain Paid Services may require you to pair the hardware and software of the product in order to use the Services. You agree to pay all applicable fees, as described in the applicable Services and the individual products pages for the applicable product, in connection with such Services, and any related taxes or additional charges. Please note that any payment terms presented to you in the process of using or signing up for a Paid Service are deemed part of this Agreement.
- b. **Billing.** When you chose to use a credit card for your payment, we use a third-party payment processor (the "Payment Processor") to bill you through a payment account linked to your Account on the Services (your "Billing Account") for use of the Paid Services. Presently, we use Stripe as our Payment processor. The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to this Agreement. Stripe's Terms of Service and Privacy Policy can be found here [<https://stripe.com/us/privacy>]. We are not responsible for error by the Payment Processor. By choosing to use Paid Services, you agree to pay us, through the Payment Processor, all charges at the prices then in effect for any use of such Paid Services in accordance with the applicable payment terms and you authorize us, through the Payment Processor, to charge your chosen payment provider (your "Payment Method"). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that it makes even if it has already requested or received payment.
- c. **Payment Method.** The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method. If we, through the Payment Processor, do not receive payment from you, your account will be suspended.
- d. **Recurring Billing.** Some of the Paid Services may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by you. By choosing a recurring payment plan, you acknowledge that such Services have an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. WE MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY US) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT

AFFECT CHARGES SUBMITTED BEFORE WE REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION OR CHANGE YOUR PAYMENT METHOD, GO TO [HTTPS://MY.NANIT.COM](https://my.nanit.com).

e. **Product Orders.** All products, specifications, and prices described on the Services are subject to change at any time without notice. Prices for the products may be displayed in US dollars or in local currency, depending on the location from which you access the Services. Prices do not include any tax, value added tax or other governmental charge or assessment on the sale, shipment, production or use of any products hereunder. The applicable shipping rates will be displayed during the checkout process. Products purchased via the Services will be shipped to the address you designate as the shipping address during the check-out process. Shipping will be made on date(s) selected by us. All items will be packed for shipment and shipped in accordance with our standard practices. We shall not be liable for any damages or penalties for delivery delay or for failure to give notice of delay. The products are covered by a limited warranty as described in the Warranty Terms [<https://www.nanit.com/legal/warranty>]. The foregoing terms shall only apply to the extent you purchase product directly from Nanit.

f. **Returns.** You may return products that you purchase via the Services in accordance with our return policy available here: [<https://www.nanit.com/legal/return-policy>]. Restrictions may apply; our return policy only applies to products purchased directly from Nanit.

g. **Replacement Products.** By submitting your credit card information to us and our Payment Processor, you acknowledge that if you request a replacement product, you are required to return your original product to us. You hereby accept responsibility for returning such original product to us within thirty (30) days' of receipt of your replacement product. IF SUCH ORIGINAL PRODUCT IS NOT RETURNED, YOU ACKNOWLEDGE THAT WE MAY SUBMIT A CHARGE TO YOUR CREDIT CARD INFORMATION STORED WITH OUR PAYMENT PROCESSOR EQUAL TO THE THEN-CURRENT RATE FOR THE REPLACEMENT PRODUCT WITHOUT FURTHER AUTHORIZATION FROM YOU.

h. **Current Information Required.** YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY US OR OUR PAYMENT PROCESSOR IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE AT [HTTPS://MY.NANIT.COM](https://my.nanit.com). IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT WE MAY CONTINUE CHARGING YOU FOR ANY USE OF PAID SERVICES UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED YOUR PAID SERVICES AS SET FORTH ABOVE.

i. **Change in Amount Authorized.** If the amount to be charged to your Billing Account varies from the amount you preauthorized (other than due to the imposition or change in the amount of state sales taxes), you have the right to receive, and we shall provide, notice of the amount to be charged and the date of the charge before the scheduled date of the transaction. Any agreement you have with your payment provider will govern your use of your Payment Method. You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.

j. **Auto-Renewal for Subscription Services.** Unless you opt out of auto-renewal, which can be done through your Account Settings, any Subscription Services you have signed up for will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the then-current non-promotional rate. To change or resign your Subscription Services at any time, go to Account Settings. If you terminate a Subscription Service, you may use your subscription until the end of your then-current term; your subscription will not be renewed after your then-current term expires. However, you won't be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period.

k. **Reaffirmation of Authorization.** Your non-termination or continued use of a Paid Service reaffirms that we are authorized to charge your Payment Method for that Paid Service. We may submit those charges for payment and you will be responsible for such charges. This does not waive our right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described when you initially selected to use the Paid Service.

l. **Free Trials and Other Promotions.** Any free trial or other promotion that provides access to a Paid Service must be used within the specified time of the trial. You must stop using a Paid Service before the

end of the trial period in order to avoid being charged for that Paid Service. If you cancel prior to the end of the trial period and are inadvertently charged for a Paid Service, please contact us at [help@nanit.com](mailto:help@nanit.com).

9. **Termination.** We may terminate your access to all or any part of the Services at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership. If you wish to terminate your Account, you may do so by following the instructions on the Site or through the Services. Any fees paid hereunder are non-refundable. All provisions of these Terms of Service which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity and limitations of liability. Please refer to our Privacy Policy [<https://www.nanit.com/legal/privacy>], as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

10. **Warranty Disclaimer.**

a. We have no special relationship with or fiduciary duty to you. You acknowledge that We have no duty to take any action regarding:

- i. which users gain access to the Services;
- ii. what Content you access via the Services; or
- iii. how you may interpret or use the Content.

b. You release us from all liability for you having acquired or not acquired Content through the Services. We make no representations concerning any Content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, or legality of material or Content contained in or accessed through the Services.

c. THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WE, AND OUR DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT: (I) THE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (IV) THE RESULTS OF USING THE SERVICES WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE SERVICES IS SOLELY AT YOUR OWN RISK AND YOU ACKNOWLEDGE AND AGREE THAT YOU DO NOT RELY ON THE SERVICES.

d. NOT A MEDICAL DEVICE. The Services, Content and our products are not medical devices and are not intended to be used as medical devices. Furthermore, the Services and the products are neither regulated nor approved by the U.S. Food and Drug Administration, and are not designed to detect or prevent causes of any medical condition. The Services and Content are not a substitute for medical care or adult supervision. You acknowledge, understand and agree that your use of the Services, Content and the products is entirely at your own risk.

e. All risk of loss of or damage to products shall be assumed by you upon our delivery of such products to the carrier for shipment to you. Any and all claims by you for damage, loss or delays in transit shall be made by you against the carrier (with notice thereof to us), and we shall have no responsibility or obligation with respect to any such damage, loss or delay.

11. **Indemnification.** You shall defend, indemnify, and hold harmless us, our affiliates and each of our and their respective employees, contractors, directors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to your use or misuse of, or access to, the Services, Content, or otherwise from your User Content, violation of these Terms of Service, or infringement by you, or any third party using your Account or identity in the Services, of any intellectual property or other right of any person or entity, including your use of the Services to provide a link to another website or to upload Content or other information to the Services. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses.

12. **Limitation of Liability.** IN NO EVENT SHALL WE, NOR OUR DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE

SERVICES (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) OF THE GREATER OF (A) FEES PAID TO US FOR THE PARTICULAR SERVICES DURING THE IMMEDIATELY PREVIOUS THREE (3) MONTH PERIOD OR (B) \$500.00.

**13. ARBITRATION CLAUSE & CLASS ACTION WAIVER – IMPORTANT – PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS**

a. **Arbitration.** YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THESE TERMS OF SERVICE, YOUR USE OF THE SERVICES, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION UNDER THE AMERICAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY; PROVIDED, HOWEVER, THAT TO THE EXTENT THAT YOU HAVE IN ANY MANNER VIOLATED OR THREATENED TO VIOLATE OUR INTELLECTUAL PROPERTY RIGHTS, WE MAY SEEK INJUNCTIVE OR OTHER APPROPRIATE RELIEF IN ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules and if within such court's jurisdiction, unless such action is transferred, removed or appealed to a different court. You may bring claims only on your own behalf. Neither you nor we will participate in a class action or class-wide arbitration for any claims covered by this agreement to arbitrate. YOU ARE GIVING UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if we are a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act and not by any state law concerning arbitration. In the event the American Arbitration Association is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either we or you can elect to have the arbitration administered instead by the Judicial Arbitration and Mediation Services. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Service. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the Services or these Terms of Services must be filed within one (1) year after such claim of action arose or be forever banned.

b. **30-Day Opt-Out Period.** If you do not wish to be bound by the arbitration and class-action waiver provisions in this Section 13, you must notify us in writing within 30 days of the date that you first accept these Terms (unless a longer period is required by applicable law). Your written notification must be mailed to us at the following address: 244 Fifth Avenue, Suite #2702, New York, NY 10011. If you do not notify us in accordance with this Section 13(b), you agree to be bound by the arbitration and class-action waiver provisions of these Terms, including such provisions in any Terms revised after the date of your first acceptance. Such notification must include: (i) your name; (ii) your mailing address and (iv) a statement that you do not wish to resolve disputes with us through arbitration. If we make any changes to the Arbitration and Class Action Waiver section of these Terms (other than a change to the address at which we will receive notices of dispute, opt-out notices, or rejections of future changes to the Arbitration and Class Action Waiver section), you may reject any such change by sending us written notice within 30 days of the change to the address set forth in this Section 13(b). It is not necessary to send us a rejection of a future change to the Arbitration and Class Action Waiver section of these Terms if you had properly opted out of the arbitration and class-action waiver provisions in this Section 13 within the first 30 days after you first accepted these Terms. If you have not properly opted out of the arbitration and class-action waiver provisions in this Section 13, by rejecting a future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this arbitration provision, as modified by any

changes you did not reject. This notification affects these Terms only; if you previously entered into other arbitration agreements with us or enter into other such agreements in the future, your notification that you are opting out of the arbitration provision in these Terms shall not affect the other arbitration agreements between you and us.

c. **Severability.** If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with us.

14. **Governing Law and Jurisdiction.** These Terms of Service shall be governed by and construed in accordance with the laws of the State of New York, including its conflicts of law rules, and the United States of America. You agree that any dispute arising from or relating to the subject matter of these Terms of Service shall be governed by the exclusive jurisdiction and venue of the state and Federal courts of New York City, New York.

15. **Feedback.** We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Services ("Feedback"). You may submit Feedback by emailing us at [feedback@nanit.com](mailto:feedback@nanit.com). You acknowledge and agree that all Feedback will be the sole and exclusive property of us and you hereby irrevocably assign to us and agree to irrevocably assign to us all of your right, title, and interest in and to all Feedback, including without limitation all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein. At our request and expense, you will execute documents and take such further acts as we may reasonably request to assist us to acquire, perfect, and maintain its intellectual property rights and other legal protections for the Feedback.

16. **Communications.** By registering or placing an order with us, you are consenting to receive E-mails from us regarding your order. Additionally, by registering or placing an order with us, you are consenting to receive commercial E-mail from us. If you do not wish to receive commercial E-mail from us, you may remove your name from the E-mail list by contacting us.

17. **Miscellaneous.**

a. **Entire Agreement and Severability.** These Terms of Service are the entire agreement between you and us with respect to the Services, including use of the Site, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us with respect to the Services. If any provision of these Terms of Service is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Service will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

b. **Force Majeure.** We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation.

c. **Assignment.** These Terms of Service are personal to you, and are not assignable, transferable or sublicensable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without consent.

d. **Agency.** No agency, partnership, joint venture, or employment relationship is created as a result of these Terms of Service and neither party has any authority of any kind to bind the other in any respect.

e. **Notices.** Unless otherwise specified in these Terms of Service, all notices under these Terms of Service will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices should be sent to [feedback@nanit.com](mailto:feedback@nanit.com)

f. **No Waiver.** Our failure to enforce any part of these Terms of Service shall not constitute a waiver of our right to later enforce that or any other part of these Terms of Service. Waiver of compliance in any particular instance does not mean that we will waive compliance in the future. In order for any waiver of compliance with these Terms of Service to be binding, we must provide you with written notice of such waiver through one of our authorized representatives.

g. **Headings.** The section and paragraph headings in these Terms of Service are for convenience only and shall not affect their interpretation.

**Contact.** You may contact us at the following address:

244 Fifth Avenue, Suite #2702  
New York, NY 10011



**Effective Date of Terms of Service:** February 28, 2019